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ANGENEHM LAW FIRM, LTD
P.O. BOX 48755
COON RAPIDS, MN 55448

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In re Application of :
Cederberg et al. :
Application No. 09/382,709 :
Filed: August 23, 1999 :
Attorney Docket No. S 855-004-PAT :

OFFICE OF PETITIONS

ON PETITION

This is a decision in response to the paper filed April 11, 2005, which is being treated as a renewed petition under 37 CFR 1.137(a) to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Procedural History:

A Notice of Allowance and a Notice of Allowability were mailed to the address of record on May 6, 2002.

A response was not received to the Notices. Therefore, the application became abandoned as of August 6, 2002.

On August 20, 2002, a Notice to File Corrected Application Papers was mailed to the address of record. A response to the Notice has not been received. Therefore, *even if* the Office held the application not abandoned for failure to respond to the May 6, 2002 Notices, the application would be abandoned for failure to respond to the August 20, 2002 Notice.

On August 29, 2002, a petition to withdraw the holding of abandonment, or in the alternative a petition under 37 CFR 1.137(a) and 37 CFR 1.137(b), was filed. In addition, a new power of attorney and change of address were submitted.

Apparently the petition filed on August 29, 2002, were misplaced and were not properly matched with the file.

A Notice of Abandonment was mailed on February 4, 2003.

A copy of the August 29, 2002 petition to withdraw the holding of abandonment was filed on April 16, 2003.

The Technology Center issued a decision dismissing the petition under 37 CFR 1.181, on October 14, 2003.

Normally the file would have been forwarded to the Office of Petitions to issue decisions on the

petitions filed in the alternative under 37 CFR 1.137. However, on November 18, 2003, a renewed petition under 37 CFR 1.181 was filed. The petition requested that, should the petition to withdraw the holding of abandonment be dismissed, the petition be considered under 37 CFR 1.137(a), or in the alternative under 37 CFR 1.137(b). The merits of a petition under 37 CFR 1.181 are always considered prior to the merits of a petition under 37 CFR 1.137. Therefore, the Technology Center retained control of the matter and rendered a decision dismissing the petition on February 18, 2004.

The decision was returned by the USPS as undeliverable. A review of the decision indicates the decision included the correct address. The Office does not know the reason the USPS was unable to deliver the decision.

The decision stated, "The application is being forwarded to the Office of Petitions to act on applicant's alternative Petition to Revive for Unavoidable Delay or Revive for Unintentional Delay." However, the Office of Petitions did not receive the file or notice of the need to file the petition. During this time period, the file was converted from a paper file wrapper to an electronic file wrapper which may have contributed to the error by the Office.

Petitioner filed a Supplemental Argument to the previous petition on September 20, 2004. A decision dismissing the petition was mailed January 31, 2005.

Analysis:

The instant petition states that the original petition filed on August 29, 2002, included three grounds for revival. The instant petition states only one of the grounds for relief was considered and that the petition has never fully been adjudicated. The instant petition requests a "complete decision" on the petition.

The request for relief under 37 CFR 1.137(a).

As stated in the January 31, 2005 decision, relief under 37 CFR 1.137(a) can not be granted until replies have been filed to the Notice of Allowability mailed May 6, 2002, and the Notice to File Corrected Papers mailed August 20, 2002.

The file history fails to indicate a response has been submitted in reply to the Notice of Allowability which required corrected drawings.

The file history fails to indicate a response has been submitted in reply to the Notice to File Corrected Application Papers.

The Office simply can not revive the application and issue the application as a patent until corrected drawings are filed and the inventorship issues listed in the Notice to File Corrected Application Papers are resolved.

The request for relief under 37 CFR 1.137(b).

Since the petition under 37 CFR 1.137(a) is being dismissed, the Office normally would consider the petition filed in the alternative under 37 CFR 1.137(b). However, as a courtesy, considering all the facts and circumstances, the Office will refrain at this time from considering the merits of the petition under 37 CFR 1.137(b) at this time.

If the petition under 37 CFR 1.137(b) is not considered at this time and petitioner responds by submitting replies to the Notices, then the application will be revived without having charged \$665 for the petition under 37 CFR 1.137(b) since the merits of the petition under 37 CFR 1.137(b) were never considered.

If the merits of the petition under 37 CFR 1.137(b) were considered, \$665 would be charged, and the decision would likely appear almost identical to this decision because a petition under 37 CFR 1.137(b) could not be granted until the replies previously discussed were filed.

One might argue that in this case, considering the petition under 37 CFR 1.137(b) would bring petitioner no benefit while costing petitioner \$665. The Office is holding a decision on the petition in abeyance but is willing to issue a decision on the petition if petitioner continues to desire a "complete decision" on the original petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Petitions Attorney
Office of Petitions

Attached: Copies of Notice of Allowability mailed May 6, 2002, and Notice to File
Corrected Application Papers filed August 20, 2002